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                  UNITED STATES DISTRICT COURT
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                CENTRAL DISTRICT OF CALIFORNIA
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                          WESTERN DIVISION
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                                     No. ED CV 08-01470-RSWL (VBK)
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   MELVIN FISHER,
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                  Petitioner,
                                     ORDER (1) ACCEPTING AND ADOPTING
                                     THE REPORT AND RECOMMENDATION OF
                                      THE UNITED STATES MAGISTRATE
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        v.
                                     JUDGE, AND (2) DISMISSING THE
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   WARDEN DE ROSA, et al.,
                                     PETITION FOR WRIT OF HABEAS
                                      CORPUS
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                  Respondent.
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        Pursuant to 28 U.S.C. §636, the Court has made a de novo review
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   of the Petition for Writ of Habeas Corpus ("Petition"), Respondent's
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   Motion to Dismiss, Petitioner's Motion for Stay and Abeyance,
   Respondent's Answer, Petitioner's Reply, all of the records herein and
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   the Report and Recommendation of the United States Magistrate Judge
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   ("Report").
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IT IS ORDERED that: (1) the Court accepts and adopts the Report and Recommendation, (2) the Court declines to issue a Certificate of Appealability ("COA");<sup>1</sup> and (3) Judgment be entered denying and dismissing the Petition with prejudice.

6 DATED: March 21, 2011

## RONALD S.W. LEW

RONALD S. W. LEW
SENIOR UNITED STATES DISTRICT JUDGE

Under 28 U.S.C. §2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that, to obtain a Certificate of Appealability under §2253(c), a habeas petitioner must show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further'." Slack v. McDaniel, 529 U.S. 473, 483-84, 120 S.Ct. 1595 (2000)(internal quotation marks omitted); see also Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029 (2003). After review of Petitioner's contentions herein, this Court concludes that Petitioner has not made a substantial showing of the denial of a constitutional right, as is required to support the issuance of a COA.